

ORIGINAL
Dow. LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

ORIGINAL

J.G. HARRINGTON
DIRECT DIAL 202-776-2818
jharrington@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

EX PARTE OR LATE FILED December 19, 2002

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Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 - 12th Street, SW, Room 8B201
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers
CC Docket Nos. 01-338, 96-98, 98-147
Written Ex Parte Communication

Dear Ms. Dortch:

I am writing on behalf of our client Cox Communications, Inc. ("Cox") concerning certain operational issues relating to the use of inside wire subloops by competitive local exchange carriers ("CLECs") such as Cox. As described below, Cox urges the Commission to adopt the determinations concerning installation of service using inside wire subloops in its *Virginia Arbitration Order* on a nationwide basis.¹

The Issue

As defined in the Commission's rules, inside wire subloop is that portion of the loop from the point the loop enters the end-user customer premises to the point of demarcation under Section 68.3 of the rules. 47 C.F.R. § 51.319(a)(2)(i). In nearly all single-family residences and in many multi-tenant environments ("MTEs"), the point of demarcation is at a standard network interface device ("ID") or a terminal block. In those cases, Cox and other facilities-based CLECs simply can disconnect the customer-owned inside wire from the NID or terminal block and connect it to Cox's interface. In other cases, however, the point of demarcation in an MTE is not at the terminal block and a portion of the inside wire subloop extends further into the customer premises, typically to a point approximately twelve inches from an individual residents' unit. Thus, as a practical matter, Cox must use the inside wire subloop to reach a customer.

In Cox's experience, most ILECs permit a CLEC to disconnect the inside wire subloop from the customer side of the ILEC terminal block and connect it to the CLEC interface without

¹ Petition of WorldCom, Inc., et al., *Memorandum Opinion and Order*, CC Dkt. Nos. 00-218, 00-249 and 00-251, DA 02-1731 (Wireline Comp. Bur.), rel. July 17, 2002 (the "*Virginia Arbitration Order*").

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any involvement by the ILEC. This is a simple operation and does not pose any risk to the ILEC network or to the provision of telephone service. Cox, in fact, has performed this function more than 100,000 times without any difficulty. On a handful of occasions, the wrong customer's line was changed accidentally, but the situation was easily and quickly remedied. None of these incidents threatened the ILEC network or customer safety in any way. Ironically, Cox has experienced more trouble in the relatively small number of cases when the ILEC has switched a customer back to its network.

Nevertheless, a few ILECs do not permit CLECs to disconnect and reconnect inside wire subloops in the same way as they disconnect and reconnect customer-owned inside wire. These ILECs insist on procedures that create inefficiencies and impose unnecessary cost and delay on Cox and other CLECs.

For instance, at least one ILEC treats any request to use inside wire subloops as a collocation request for the MTE premises and a UNE subloop that must be ordered individually through the ILEC's operations support systems ("OSS"). This ILEC requires Cox to make a request for special construction for a new terminal block at the MTE. As is the case for collocation at an end office, ordering this collocation and having it constructed typically takes approximately four months. Even after the construction is completed, however, this ILEC requires the submission of per-customer orders for the subloop and also requires that its own technicians disconnect and reconnect inside wire subloops at the accessible terminal. This means that Cox must depend on the ILEC to process Cox's order correctly and to schedule its technicians. Then Cox must coordinate its own installers with the ILEC schedule, must hope that the ILEC technicians show up on time and must pay an installation fee to boot.

In practice, ILEC requirements to involve their own technicians whenever inside wire subloops are affected turn a simple procedure into a complex undertaking, dependent on multiple variables, and make it more difficult to schedule not just an individual installation, but any others involving the affected installer on that day. As a result, Cox is unable to guarantee to a customer when service will begin and, more important, loses control over the installation process. This effectively puts Cox at a competitive disadvantage. It is particularly problematic when a new customer is having other Cox services installed, such as high speed Internet access, and anticipates that the installation process will be completed in a single visit.

The ILECs that do not permit Cox to perform the changeover, including the ILEC described above, claim that their technicians must do the work to avoid risks to the network or customer safety. In another state, where customer-owned inside wire is the norm, Cox performs this work itself without interference or objection from the ILEC. The procedure is the same; the ILEC parent company is the same; the only difference is the claim of ownership of the inside wire subloop. Cox's experience, described above, shows that there are no meaningful risks. Moreover, following an evidentiary hearing in the Virginia arbitration proceeding, the Wireline

Competition Bureau reached the same conclusion.² Thus, there is no basis to deny CLECs the ability to perform the changeover necessary to install new service using inside wire subloops.

The Cox Proposal

The Commission can address the issues described above very simply, by applying the principles adopted in the *Virginia Arbitration Order* to all inside wire subloops. In the *Virginia Arbitration Order*, the Bureau held that CLECs would be permitted to perform changeovers without ILEC involvement or interference, subject to the requirement that all use of subloops must be reported to the ILEC so that the appropriate charge for unbundled subloops can be applied.³ It is especially important that, as the Bureau held in the *Virginia Arbitration Order*, ILECs be prohibited from requiring either the installation of an additional terminal or that per-customer orders for inside wire subloops be placed in advance through ILEC OSS interfaces.

One consequence of applying this principle is that charges for inside wire subloops should reflect only the costs of the subloop itself, and not any charges for technician dispatch or labor.⁴ When the Arizona Corporation Commission used this approach in determining rates, it set the price for an inside wire subloop at \$0.39 a month, far less than the rates imposed when an ILEC technician is dispatched.

The Commission can implement this proposal in either of two ways. First, it could simply state in its order in this proceeding that ILECs are not permitted to require additional construction or the presence of an ILEC technician to perform inside wire subloop changeovers, and that inside wire subloops should be priced accordingly. Alternatively, the Commission could include specific language in its rules to address this issue. For instance, the following language could be inserted as a new paragraph in Section 5.1.319(a)(2) of the rules:

No incumbent LEC may require, as a condition of use of inside wire subloops, that additional equipment be installed, that an incumbent LEC technician be present or perform the installation, or that such subloops be ordered prior to use by another LEC, and rates for inside wire subloop elements shall be based on the costs of the inside wire subloop facilities, without any allowance for incumbent LEC installation. When another LEC uses or relinquishes an inside wire subloop, it shall notify the incumbent LEC promptly to permit charges for the subloop to be applied or discontinued.

² *Virginia Arbitration Order*, ¶¶ 422, 428. Although various parties have sought reconsideration of certain elements of the decision, the determinations concerning inside wire subloops have not been challenged, and so that aspect of the decision is now a final order.

³ *Id.*, ¶ 422

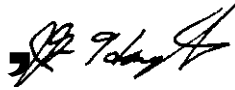
⁴ Of course, such charges should be applied when a CLEC requests a technician.

Marlene H. Dortch, Esq.
December 19, 2002
Page 4

In accordance with the requirements of Section 1.1206 of the Commission's rules, the original and five copies of this letter are being submitted to your office on this date.

Please inform me if any questions should arise in connection with this letter

Sincerely,

A handwritten signature in black ink, appearing to read "J.G. Harrington", with a stylized flourish at the end.

J.G. Harrington

JGH/vll

cc: Thomas Navin
Jeremy Miller
Michael Engel